APPEAL NO. 040595
FILED APRIL 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 10, 2004. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease; that the claimant's date of injury, pursuant to Section 408.007, is _____; and that the claimant timely notified her employer of the claimed injury within 30 days. The claimant appealed the injury determination on sufficiency of the evidence grounds and asserts that the hearing officer applied the wrong legal standard in reaching his determination on that issue. The file does not contain a response from the respondent/cross-appellant (carrier). The carrier appealed the hearing officer's determinations regarding the date of injury and timely notice to the employer on sufficiency of the evidence grounds. The claimant responded, urging affirmance of those determinations.

DECISION

Affirmed.

The hearing officer heard the evidence that was presented on the disputed issues of whether the claimant sustained a compensable injury in the form of an occupational disease, the date of the claimed injury for purposes of the 1989 Act, and whether she timely notified her employer of the injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We are concerned by some of the comments which the hearing officer wrote in his Statement of the Evidence. Specifically, on page four of the decision and order, the hearing officer wrote:

> The large volume of medical literature resulting from various extensive medical/scientific studies by doctors and medical groups showed exactly

> what the [c]arrier contended, that [carpal tunnel syndrome (CTS)] was not caused by repetitive motion/trauma at work, especially keyboarding. When one reads and comprehends the controversial medical literature presented by the [c]arrier, one understands the dispute and argument in the medical community over the causes of CTS. There is a general assumption that repetitive motion/trauma of the hand/wrist can cause CTS; but there is no medical study that has substantiated that assumption. More importantly, the studies found that repetitive motion workers (typist, mill worker, assembly plant worker) had the same rate of CTS as the control sample of the general public (of which 25% were not even employed).

To the extent the hearing officer is attempting to state that CTS can never be compensable as a matter of law, we disagree. CTS had not been deemed, *per se*, to be an ordinary disease and there are legions of cases where CTS is held to be a compensable injury. Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996, and the cases cited therein. We likewise cannot agree with a hearing officer attempting to make an independent medical judgment regarding what does or does not cause/aggravate a disease such as CTS. While it is true that the carrier in this case did submit a "large volume of medical literature" pertaining to the cause of CTS, there is insufficient evidence to support the hearing officer's statement that "[t]here is a general assumption that repetitive motion/trauma of the hand/wrist can cause CTS; but there is no medical study that has substantiated that assumption." It stands to reason that a party will submit evidence that tends to support its position on a given issue. There is no indication that the results of all studies performed on the causation of CTS were placed into the record on this matter. As such, we cannot agree that "no medical study" has substantiated a relationship between repetitive activity and CTS.

Despite the above-caution, there was in fact conflicting evidence presented regarding the exact nature of the claimant's job duties and whether or not they involved sufficiently repetitive activities to cause an injury. Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge